



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
<http://www.blm.gov/ut/st/en.html>



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DECISION

Southern Utah Wilderness Alliance	:	Protest to the Inclusion of Certain
c/o Stephen Bloch and David Garbett	:	Parcels in the August 17, 2010
425 East 100 South	:	Competitive Oil and Gas Lease Sale
Salt Lake City, Utah 84111	:	

Protest Denied

On July 2, 2010, the Bureau of Land Management (BLM) provided proper notice to the public that 13 parcels of land would be offered in a competitive oil and gas lease sale scheduled for August 17, 2010. The notice also indicated that the protest period for the lease sale would end on August 2, 2010. BLM withdrew one parcel by errata notice issued on July 30, 2010. In a letter received by the BLM on August 2, 2010, the Southern Utah Wilderness Alliance (SUWA) protested the inclusion in the sale of 10 of the 12 parcels. The 10 parcels are on public lands administered by the BLM's Vernal Field Office (VFO), as follows:

UT0810-034	UT0810-035	UT0810-036	UT0810-052	UT0810-055
UT0810-056	UT0810-057	UT0810-058	UT0810-059	UT0810-060

SUWA alleges that in offering the 10 parcels for lease, the BLM has violated the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA). SUWA contends that the parcels should be withdrawn from the lease sale until such time that BLM has complied with NEPA and FLPMA or, in the alternative, that the BLM should attach unconditional no surface occupancy stipulations (NSO) to each parcel before issuing leases for the parcels.

Decision

For the reasons set forth below, I have determined that BLM complied with the requirements of NEPA, FLPMA, and other applicable Federal laws and regulations prior to the inclusion of the 10 parcels in the August 17, 2010 lease sale. Consequently, SUWA's protest is denied.

SUWA's allegations concerning quantitative air quality modeling.

SUWA alleges that the BLM violated NEPA and FLPMA by not completing, prior to offering the 10 parcels for lease, quantitative dispersion modeling to ensure that leasing the parcels would not violate Clean Air Act (CAA) standards such as those involving national ambient air quality standards (NAAQs) and the prevention of significant deterioration (PSD) increment limits. Further, SUWA alleges that such quantitative dispersion modeling should have focused on fine particulate pollution and ozone. SUWA broadly asserts: "To comply with NEPA, prior to selling oil and gas leases[,] BLM must thoroughly analyze whether air pollution from the oil and gas development authorized will exceed relevant air quality standards or have adverse impacts on public health or national parks and must support its conclusions with relevant evidence. BLM has not done so." Protest at 3 (underlining added). The fundamental problem with SUWA's assertions about quantitative modeling is, as discussed below, SUWA's incorrect assumptions that (i) BLM's inclusion of the 10 parcels in the lease sale and possible, subsequent issuance of leases for such parcels constitutes the authorization of specific oil and gas development on the parcels, (ii) such authorized development on the 10 parcels may have measurable air quality impacts (i.e., ozone and fine particulates), (iii) such measureable air quality impacts may be identified through quantitative modeling, and (iv) quantitative modeling is a practical and effective mechanism for identifying such impacts.

In the event the BLM issues leases covering the 10 parcels, that issuance will not constitute authorization of any specific development on the respective leaseholds. No specific oil and gas development may take place on any parcel until the BLM receives a specific proposal, generally in an application to drill a well or wells (APD) and, following analysis of the proposal under NEPA and other applicable laws, approves the APD. Because the holder of an oil and gas lease is generally entitled to eventually undertake some level of development on the leasehold, following the lessee's submission of an APD and BLM's consideration of the proposal, and that will have some impact, the BLM must complete a NEPA analysis of the reasonably foreseeable, measurable impacts of leasing. With respect to the 10 parcels, as explained in the Determination of NEPA Adequacy (DNA) issued by the BLM's Vernal Field (VFO) office prior to the August 17, 2010 lease sale, that analysis was completed in the EIS process during the preparation of the Vernal Field Office Resource Management Plan, which was adopted in October 2008.¹ As set forth in the DNA, BLM reviewed the Final EIS underlying the RMP and concluded that the impacts of leasing the lands comprising the 10 parcels were adequately addressed in the Final EIS. In addition, the DNA provides that any exploration and development on the parcels would be based on subsequent review and authorization.²

¹ The Vernal Filed Office Resource Management Plan was approved by the Assistant Secretary for Lands and Minerals, Department of the Interior, in October 2008. Challenges to the adequacy of the RMP will not be considered here and SUWA is referred to the Director's Protest Resolution Report for the Vernal RMP located online at:

http://www.blm.gov/style/medialib/blm/wo/Planning_and_Renewable_Resources/utah.Par.64438.File.pdf/Vernal_RMP_Directors_Protest_Resolution_Report.pdf.

² In preparing the DNA, BLM specialists reviewed existing information and completed interagency review and consultation with the Utah Division of Wildlife Resources (DWR) and the Utah Department of Environmental Quality and the U.S. Fish and Wildlife Service (USFWS). Specialists from the BLM VFO and the BLM Utah State Office ensured that the information considered for all lease parcels was correct and that the stipulations and notices were consistent with the RMP. The Proposed RMP/Final EIS analyzed the newest resource information including

Assuming for discussion that the leasing of the 10 parcels may have impacts on air quality, the question becomes which of those impacts are measurable at the pre-leasing stage and, for those measurable impacts, what are the practical mechanisms for identifying such impacts? In its protest, SUWA points out that the BLM did not conduct quantitative modeling for ozone and fine particulate pollution during preparation of the RMP, and contends that the BLM's not completing such modeling prior to leasing the 10 parcels violates NEPA and FLPMA. However, SUWA's assertion would have no bearing on the matter at hand if the leasing of the 10 parcels may not have impacts on ozone or fine particulate pollution. Similarly, it would have no bearing if it may have such impacts, but quantitative modeling is not a practical mechanism for identifying such impacts. SUWA contends that recent information on wintertime ozone levels at two monitoring stations in the Uinta Basin,³ exceedences of ozone modeled in the Uinta Basin Air Quality Study (UBAQS), EPA correspondence to the BLM concerning the UBAQS, SUWA correspondence to BLM regarding wintertime levels of fine particulates (PM_{2.5}) in the Uinta Basin, and certain district court rulings, underscore that the BLM should have completed quantitative dispersion modeling before offering the 10 parcels for lease. Apart from such general information and contentions, however, SUWA does not present any information in its protest that would support concluding that the leasing of the 10 parcels may impact ozone and fine particulate pollution. Further, the BLM is not aware of any information that would support such conclusion. Likewise, there is nothing in the SUWA protest, or in other information, to support concluding that quantitative dispersion modeling is a practical, efficient means of identifying such impacts.

For quantitative air quality modeling to result in information that is useful, there needs to be detailed source and emission data. In general, such information is not present at the pre-leasing stage, and the results of any modeling undertaken at this stage would not be particularly accurate and useful. Attempting to conduct modeling with insufficient information will not only be unproductive but will potentially afford less protection to the environment than conducting a more in-depth analysis when project-specific information is available. Because quantitative air quality modeling at the pre-leasing stage will not have especially reliable results, it is not possible to justify the additional time and resources necessary to conduct such modeling. This is especially true where, as in the present case, a relatively small number of parcels are involved. In the event the BLM receives development proposals covering the parcels after lease issuance, it will analyze the potential impacts of the proposed development on air quality and climate change on a project-specific or site-specific basis, and conduct modeling in this process if it appears appropriate to do so. Therefore, in no way does the BLM's leasing of the 10 parcels without first completing air quality modeling negate or bypass the requirement that it fully analyze the

sensitive and special status species, therefore providing the BLM with the basis to apply stipulations and notices to protect resources, including air quality, when deemed necessary.

³ The methods of analyzing and managing winter ozone are still in development. Existing photochemical models are currently unable to replicate winter ozone formation, in part due to the very low mixing heights associated with the unique meteorology associated with these ambient conditions. Additional monitoring and analysis will be required to determine the extent and frequency of winter ozone in the Uinta Basin. Air quality (including seasonal restrictions) commitments are included in the stipulations attached to each of the 10 protested parcels to manage internal combustion gas field engines as coordinated with the State of Utah. The ozone information in SUWA's protest is not significant new information requiring supplemental NEPA analysis prior to leasing the parcels.

potential environmental impacts of any specific development activity that is proposed after the parcels are leased.

SUWA's allegations concerning climate change and deposition of disturbed desert dust.

SUWA briefly discusses climate change in its protest, but does so primarily by arguing that the BLM did not adequately consider climate change during its preparation of the RMP. SUWA Protest at 7-9. Given that a protest to the inclusion of parcels in a lease sale is not the appropriate place to challenge the NEPA analysis underlying the preparation of a land use plan, SUWA's contentions in regards to climate change and the RMP will not be further discussed here. For the same reasons, SUWA's contentions about the degree to which the BLM should have studied the deposition of disturbed desert dust on nearby mountain snowpack during preparation of the RMP (SUWA Protest at 9) will not be further discussed. To the extent SUWA intended to contend that the BLM should have assessed, at the pre-leasing stage, the potential impacts on climate change and deposition of disturbed desert dust stemming from the leasing of the 10 parcels, SUWA has presented no information in its protest to support such contentions. Further, BLM is not aware of any information that would support such contentions and, as discussed with respect to SUWA's position on quantitative modeling, believes that attempting to complete such analyses at the pre-leasing stage would not lead to accurate, useful results and would not be an appropriate use of the agency's time and resources.

Conclusion

As the party challenging the BLM's offering of the 10 protested parcels for leasing, SUWA bears the burden of establishing that the BLM's action was premised on a clear error of law, error of material fact, or failure to consider a substantial environmental question of material significance. SUWA has not met this burden. For this reason, and for the previously discussed reasons, SUWA protest as to parcels UT0810-034, UT0810-035, UT0810-036, UT0810-052, UT0810-055, UT0810-056, UT0810-057, UT0810-058, UT0810-059, and UT0810-060 is hereby denied. The BLM has received offers on all 10 parcels and will issue leases for them after issuing this decision.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

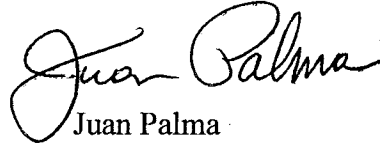
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;

3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find attached a list of those parties who purchased the subject parcels at the August 2010 lease sale and who therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.



Juan Palma
State Director

Enclosure

1. Form 1842-1 (2pp)
2. List of Purchasers

cc: James Karkut, Office of the Solicitor, Intermountain Region
125 South State Street, Suite 6201, Salt Lake City, UT 84138

List of Purchasers

Stonegate Resources LLC
4994 E. Meadows Drive
Park City, Utah 84098

Turner Petroleum Land Services
7076 South 900 East, Suite B
Midvale, Utah 84047

Rosewood Resources Inc.
2101 Cedar Springs Road, Suite 1500
Dallas, Texas 75201

Quinex Energy Corp.
465 South 200 West # 300
Bountiful, Utah 84010

Enduring Resources LLC
475 17th St # 1500
Denver, Colorado 80202